

Joshua Nassir, *Pro Hac Vice*
jnassir@treeouselaw.com



April 25, 2023

VIA ECF

The Honorable Judge Anne Y. Shields
Eastern District of New York

Re: ***Duncan v. Kahala Franchising, L.L.C.***, No. 2:22-cv-07841 – Initial Joint Letter

To the Honorable Judge Shields:

Plaintiff Jenna Marie Duncan (“Plaintiff”) and Defendant Kahala Franchising, L.L.C. (“Defendant”) (together, the “Parties”) submit this Initial Joint Letter, with an attached proposed Discovery Plan Worksheet, pursuant to Rule VI of Your Honor’s Individual Practices Rules:

1. **Name of the Case:** *Duncan v. Kahala Franchising, L.L.C.*, No. 2:22-cv-07841.
2. **Basis for Federal Jurisdiction:** Plaintiff alleges that jurisdiction is proper under the Class Action Fairness Act, 28 U.S.C. §1332(d) in that: (1) this is a class action involving more than 100 Class members; (2) the parties are minimally diverse, as members of the proposed class are citizens of states different than Defendant’s home state; and (3) the amount in controversy is in excess of \$5,000,000, exclusive of interests and costs. Defendant reserves the right to challenge jurisdiction if its motion to dismiss is not granted. Specifically, Defendant will assert that jurisdiction not proper under the Class Action Fairness Act, 28 U.S.C. §1332(d) because: (1) Plaintiff is not a member of a Class that contains more than 100 Class members, and (2) the amount in controversy is not in excess of \$5,000,000.
3. **Status on Serving Defendants and Their Answer:** All known Defendant(s) have been served by Plaintiff. Defendant has yet to file an Answer to Plaintiff’s Class Action Complaint (ECF No. 1, “CAC”).
4. **Counterclaims and Crossclaims:** Defendant does not anticipate bringing any counterclaims or crossclaims in this Action at this time.

Joshua Nassir, *Pro Hac Vice*
jnassir@treeouselaw.com

5. **Explanation of Facts:** Plaintiff alleges that Defendant has marketed the ice cream products at issue with the names of specific ingredients, representing to its customers that the products contain those advertised ingredients. *See* CAC ¶¶ 1-2, 11. Defendant denies that it marketed ice cream flavors to Plaintiff in such a way that Plaintiff, or another reasonable consumer, would be confused about the ingredients based on Defendant's advertisement of its ice cream flavors.
6. **HIPPA Compliance:** N/A.
7. **Paper Discovery:** Plaintiff will search for and produce any and all documents regarding her purchase of the Products (e.g., receipts), to the extent they exist. Defendant will search for and produce documents that show how Defendant's ice cream flavors were marketed to Plaintiff at the time and place referenced in Plaintiff's Complaint. The Parties will exchange this initial paper discovery on or before May 28, 2024, which is 60 days following the date of when the Parties estimate the subsequent status letter will be submitted – March 29, 2024.
8. **Subsequent Joint Status Letter and Conference:** The Parties propose that a further status letter be submitted 30 days following the Court's ruling on Defendant's forthcoming Motion to Dismiss Plaintiff's Complaint. The Parties propose a status conference with the Court fourteen (14) days following the status letter.

Sincerely,



Joshua Nassir

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Civil File No.: 2:22-cv-07841 (GRB/AYS)

Jenna Marie Duncan, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

**(PROPOSED) DISCOVERY PLAN
WORKSHEET**

Kahala Franchising, L.L.C.,

Defendant.

Pursuant to Magistrate Judge Shields' Individual Practice Rules, Rule VI, the parties hereby submit this Proposed Discovery Plan Worksheet in advance of the Rule 16 initial conference scheduled for May 1, 2023.

Tier I Pre-Settlement Discovery

Deadline for completion of Rule 26(a) initial disclosures And HIPAA-complaint records authorizations	<u>3/1/24</u>
Completion date for Phase I Discovery As agreed upon by the parties: (See paragraph 7 of joint letter requirement)	<u>5/28/24</u>
Status conference TBD by the court: (Generally 15 days post Tier I Discovery)	<u>6/12/24</u>

Tier II Discovery and Motion Practice

Motion to join new parties or amend the pleadings: (Presumptively 15 days post status conference)	<u>6/26/24</u>
All fact discovery completed by: (Presumptively 9 months after deadline for joining parties/amend the pleadings)	<u>4/26/25</u>
Expert discovery completed by: (Presumptively 3 months after close of fact discovery)	<u>7/30/25</u>
Final date to take first step in dispositive motion practice:	<u>8/29/25</u>

(Parties are directed to consult the District Judge's individual rules regarding such motion practice. (Presumptively 30 days after close of discovery))

Join Proposed Pretrial Order to be Submitted:
(30 days after dispositive motion practice deadlines)

8/29/25

TREEHOUSE LAW, LLP

Dated: 4/25/2023

By /s/ Joshua Nassir
Joshua Nassir (*Pro Hac Vice*)
Attorneys for Plaintiff
10250 Constellation Blvd., Suite 100
Los Angeles, CA 90067
Telephone: (310) 751-5948
jnassir@treehouselaw.com

BASSFORD REMELE
A Professional Association

Dated: 4/25/2023

By /s/ Kyle S. Willems
Kyle S. Willems (*Pro Hac Vice*)
Bryce D. Riddle (*Pro Hac Vice*)
Attorneys for Defendant
100 South 5th Street, Suite 1500
Minneapolis, MN 55402-1254
Telephone: (612) 333-3000
Facsimile: (612) 333-8829
kwillems@bassford.com
briddle@bassford.com

Plaintiff has received consent from Defendant's counsel to attach its electronic signature.